

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEB 25 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

| | | |
|--------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MM Docket No. 93-279 |
| Table of Allotments |) | RM-8368, 8385 |
| FM Broadcast Stations. |) | |
| (Boulder City, Las Vegas, |) | |
| and Cal-Nev-Ari, Nevada) |) | |

To: Mass Media Bureau (Policy & Rules)

OPPOSITION TO MOTION TO INCLUDE
SENATOR REID'S LETTER IN THE RECORD

Rock "N" Roll, Inc., licensee of FM station KRRI, Boulder City, Nevada, (hereinafter "KRRI"), by its attorney, hereby opposes the petition of Richard W. Myers, filed February 22, 1994, to include the letter from Senator Reid in the Docket. In support thereof, the following is shown.

Senator Reid sent a letter to the Commission commenting on the merits of this proceeding, a contested matter, under date of December 28, 1993. The Commission's Notice of Proposed Rule Making in this proceeding, released November 12, 1993, specifically warned the public that all comments must be served on all parties to the proceeding. Because Senator Reid did not serve KRRI with his letter, the Commission was forced, by its ex parte rules to exclude the senator's letter from the Docket.

Myers, apparently fearful of not prevailing on the merits, apparently sought to influence the Commission by enlisting a United States Senator on his behalf. The

Doc

Commission, an independent regulatory agency, is bound to act in the public interest, convenience and necessity, not on the basis of political influence. For this reason, it adopted and follows strict rules regarding ex parte communications. Such rules apply to all who would communicate with the Commission, including United States Senators. In truth, because of the greater potential for influence by a member of Congress, the Commission must scrupulously abide by its ex parte rules when Congressional communications are involved.

Myers asserts that the Commission should waive its ex parte rules because the Senator's letter was written before the initial comment deadline and a copy was supplied to all parties in Myers' Supplemental Reply Comments, filed February 1, 1994. Such facts do not warrant a waiver. The Commission may consider a communication in a contested proceeding only when it is served on the other parties contemporaneously with its filing. Had the Commission desired to allow Myers' approach, the rules regarding service would have so stated.

KRRI was prejudiced by the failure to be served by the subject letter when it was filed with the Commission, for it was unable to respond to the matters asserted therein in its reply comments.

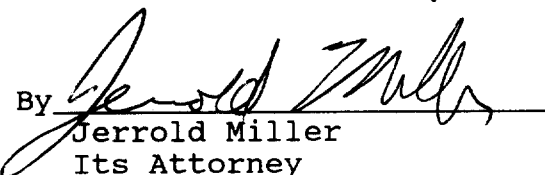
Persons seeking a rule waiver from the Commission must plead with particularity the unique circumstances which justify a waiver. Waivers are granted only in unusual and

extenuating circumstances.¹ Myers has shown nothing unusual or extenuating.

Myers argues that the Commission may not properly ignore the views of a Senator. He cites no authority for this hyperbole. No one, not even a Senator, is entitled to act outside the Commission's rules. The inclusion of the letter in Myers' Supplemental Reply Comments does not remove the taint from its ex parte submission initially. The Commission may not consider the matters contained in the subject letter in making its decision. Clearly, Myers' Motion lacks good cause and must be denied.

Respectfully submitted,

Rock "N" Roll, Inc.

By 
Jerrold Miller
Its Attorney

February 25, 1994

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

¹ "When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action." Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F.2d 664,666 (D. C. Cir. 1968). Further, [t]he burden is on the applicant seeking waiver ... to plead specific facts and circumstances which would make the general rule inapplicable." Tucson Radio, Inc. v. FCC, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 19 94
a copy of the foregoing document was placed in the United States
mail, first class postage prepaid, addressed to the following:

Brown Nietert & Kaufman, Chartered
1920 N Street, NW
Suite 600
Washington, DC 20036

Peter Tannenwald, Esq.
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, NW
Suite 600
Washington, DC 20036-5339

Faye Ann Beach